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July 10, 1996

Duane L. Shroufe, Director
Arizona Game and Fish Department
2221 West Greenway Road
Phoenix, Arizona 85023-4399

Re: I96-009 (R96-018)

Dear Mr. Shroufe:

You have asked whether the 1994 deletion of certain language in A.A.C. R2-5-303(G)(2) removes both the requirement and the discretion from the Arizona Department of Administration ("ADOA") to grant raises to all employees in the same classification when a new employee is hired at a higher salary than the existing employees in that job classification (an "equity adjustment"). We conclude that the deletion of the language in A.A.C. R2-5-303(G)(2) removes the mandate and the discretion to award equity adjustments. Whether an individual employee's salary may be raised depends instead on whether the employee meets the standards in other ADOA personnel rules.

Background

Public officers and employees are entitled to receive the salary authorized by law for their position. A.R.S. § 38-601. It is the responsibility of the Director of the ADOA ("the Director") to direct and control the State's personnel administration system. A.R.S. § 41-761. All state officers and employees subject to the State personnel system are paid salaries within the range established by the ADOA's salary plan as adopted or modified by the Legislature. A.R.S. § 38-611(B).

Normally, the salary of a new employee is the entrance salary established for the pay grade of the employee's class. A.A.C. R2-5-303(F). Under certain conditions, the Director has discretion to authorize hiring a new employee at a special entrance rate. A.A.C. R2-303(G)(2).

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Prior to September 15, 1994, the ADOA rule, A.A.C. R2-5-303(G)(2), concerning salary administration, read:

The Director may authorize a special entrance rate for the appointment of a qualified applicant at a higher salary than the entrance salary based on such factors as the unusual and outstanding character of the applicant's experience, education, and ability, the availability of qualified applicants, the applicant's earning history, or the geographical location of the position, provided the special entrance rate is not higher than the maximum salary of the grade. When such an appointment is made, the salaries of all other employees with lower salaries, who are in the same class, agency, and geographical location, who possess similar qualifications shall be raised to the same level.

(Emphasis added.) The last sentence of the rule required the Director to adjust upward the salaries of all employees in the same class, agency, and geographic location with similar qualifications (employees with "similar qualifications") when a new employee in that class was hired at a salary higher than the current employees (a "special appointment"). However, in 1994, the ADOA amended A.A.C. R2-5-303(G)(2) by deleting the last sentence of the rule.

In the Concise Explanatory Statement accompanying the proposed amendment to R2-5-303, the ADOA evaluated the arguments for and against the proposed rule change.¹ In response to comments opposing the deletion of the language mandating raises, the ADOA noted:

While we appreciate the opposing concerns expressed, amendments to Rule R2-5-303.G and H. were adopted because: the benefits to the agencies of having greater freedom to establish salaries was believed to outweigh the occasional effect on individual salaries; the rule has been used as a mechanism to obtain employee salary increases; and, as recommended by the Auditor General, the amendment will provide agencies with increased flexibility. Agencies will retain an administrative process for correcting gross inequities.

¹ Legislation in effect at the time this amendment was adopted required a concise explanatory statement that contained the agency's reasons for adopting the rule, the reasons for changes between the proposed and final rule, and an evaluation of the arguments for and against the rule. 1986 Ariz. Sess. Laws, ch. 232, § 5. Only the reasons used in the concise explanatory statement could justify the rule's validity, if challenged. Id.

Under the original rule, State agencies would have been unable to make a special appointment unless funds were available to raise the salaries of all employees with similar qualifications. Because of this restriction, lack of sufficient funds may have prevented the State from hiring qualified applicants.

Analysis

The same principles of construction that apply to statutes also apply to rules of an administrative agency. Marlar v. State, 136 Ariz. 404, 410, 666 P.2d 504, 510 (App. 1983). The cardinal rule of statutory interpretation is to determine the Legislature's intent. Automatic Registering Mach. Co. v. Pima County, 36 Ariz. 367, 370-71, 285 P. 1034, 1035 (1930). Determination of intent is taken from the language of the statute before relating to other sources. E.C. Garcia and Co. v. Arizona State Dep't of Revenue, 178 Ariz. 510, 517, 875 P.2d 169, 176 (App. 1993). Thus, we begin our analysis with the current language of A.A.C. R2-5-303(G)(2).

When the ADOA deleted the last sentence of R2-5-303(G)(2), it removed the mandate to award equity adjustments for all employees with similar qualifications when a State agency made a special appointment. Under principles of statutory construction, when an act is repealed, it loses all force and effect. Gustafson v. Rajkovich, 76 Ariz. 280, 285, 263 P.2d. 540, 543 (1953). If the ADOA wished to reserve discretion to give equity raises, it could have merely changed the "shall" to "may" in A.A.C. R2-5-303(G)(2).

The only remaining ADOA rule that addresses a salary adjustment necessitated by inequity is A.A.C. R2-5-303(A)(4). That rule allows the Director to administratively adjust an employee's salary to resolve a clear inequity. Although A.A.C. R2-5-303(A)(4) is neither automatic nor applied to an entire class, agency, and geographic location, it does provide the Director with some discretion to raise an employee's salary based on the facts presented.

The other personnel rules that authorize salary increases for State employees are neither automatic nor based on considerations surrounding the salaries of special appointments. For example, the Director has discretion to establish alternative salary plans and pay practices for certain classes or groups of employees. A.A.C. R2-5-302. In approving special salary plans, the Director evaluates factors such as occupational patterns, economic conditions, and incentive plans common to government, business and industry. A.A.C. R2-5-302(C). Heads of employing agencies, however, have no authority to award equity adjustments to employees.

Conclusion

The 1994 amendment to A.A.C. R2-5-303(G)(2) removed the requirement and discretion to automatically raise the salaries of all employees in the same classification when a special appointment is made. The ADOA Director has discretion to administratively adjust

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an individual employee's salary to resolve a clear inequity. A.A.C. R2-5-303(A)(4). The ADOA Director may also approve special salary plans and pay practices for certain classes or groups of employees under the standards established in A.A.C. R2-5-302(C). However, neither of these provisions allow automatic salary increases to employees in the one class, agency, and geographic location as a result of a special appointment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Grant Woods', with a stylized, flowing script.

Grant Woods
Attorney General

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